BEFORE THE

OIL & GAS COMMISSION

GARY L. TEETER REVOCABLE TRUST, Appellant, -vs- DIVISION OF OIL & GAS RESOURCES MANAGEMENT, Appellee, and R.E. GAS DEVELOPMENT, LLC, Intervenor.	:	Appeal No. 895 Review of Chief's Order 2014-544 (R.E. Gas Development, LLC; Grunder North Unit) **FINDINGS, CONCLUSIONS AND ORDER OF THE COMMISSION**

Appearances: J. Richard Emens, Craig J. Wilson, Counsel for Appellant Gary L. Teeter Revocable Trust; Brian Becker, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; John K. Keller, Gregory D. Russell, Michael J. Settineri, J. Taylor Airey, Counsel for Intervenor R.E. Gas Development, LLC.

Date Issued: September 17, 2015

BACKGROUND

This matter comes before the Oil & Gas Commission upon appeal by the Gary L. Teeter Revocable Trust from Chief's Order 2014-544. This order approved an application for unitization, associated with an oil & gas drilling unit to be known as the Grunder North Unit. Unitization was sought by R.E. Gas Development, LLC ["Rex"]. The Teeter Trust owns unleased property, which has been included in the Grunder North Unit pursuant to Chief's Order 2014-544 ["the unitization order"].

On February 3, 2015, Rex filed with the Commission, a ***Motion to Intervene*** into this action. No objections to this motion were heard, and on March 11, 2015, the Commission **granted** Rex intervenor status, as a full party to this appeal.

On June 11, 2015, this cause came on for hearing before the Oil & Gas Commission. At hearing, the parties presented evidence and examined witnesses appearing for and against them. On July 10, 2015, written closing arguments were submitted by all parties.

ISSUE

The primary issue in this appeal is: **Whether the Division Chief acted lawfully and reasonably in issuing Chief's Order 2014-544.**

In order to decide this primary issue, the Commission must consider: **(1) whether the unitization provisions of O.R.C. §1509.28 are applicable to the facts of this matter, (2) whether the Division Chief properly considered and approved Rex's application for unit operations, and (3) whether the terms and conditions of the Grunder North Unitization Order are just and reasonable.**

FINDINGS OF FACT

1. On May 13, 2014, R.E. Gas Development, LLC ["Rex"] filed an application for unit operations associated with certain lands located in Carroll County, Ohio. The application requested unit operations in the Utica and Point Pleasant Formations, underlying portions of Harrison, Washington and Center Townships. The application proposed the installation of four horizontal wells, oriented in a southeast to northwest direction. The proposed wells would be drilled to depths between 7,379 and 7,670 feet, and would include lateral sections extending approximately 5,675 feet. The unitized formation from which the four proposed wells would produce was identified as being located at an approximate depth of fifty feet above the top of the Utica Formation to fifty feet below the base of the Point Pleasant Formation. The expected life of the proposed wells is estimated at 30 - 35 years. The proposed unit would be known as the Grunder North Unit.

2. Rex is a corporation organized under the laws of the state of Delaware, with its principal office located in Pennsylvania. Since 2011, Rex has leased the oil & gas rights underlying over 16,000 acres of land located in Carroll County, Ohio. To date, Rex has drilled 17 wells in Carroll County, utilizing six separate drill pads.

3. As proposed, the Grunder North Unit would encompass 593.9571 acres, and include 125 separate tracts of land. Of this proposed unit, 522.8251 acres and 123 tracts have been voluntarily leased to Rex or to other working interest owners.[1] Unleased tracts, proposed for inclusion within the unit, are owned by the Teeter Trust and Mr. Ronald Roudebush, Trustee. Combined, these two unleased tracts cover 71.1320 acres (about 12% of the unit acreage). Thus, approximately 88% of the acres proposed for this unit are subject to voluntary leasing arrangements.

4. The Grunder North Unit is not the first unit operated by Rex in this area. Rex currently operates six horizontal wells drilled on the Grunder South Unit. The North and South units are immediately adjacent to one another. A drill pad has already been constructed on the Grunder South Unit. This drill pad is currently in use for the wells located on the South unit. This pad would also be utilized for the four wells proposed in the North unit.

5. Mr. Gary L. Teeter lives in Carroll County, Ohio on a 90-acre farm located along State Route 171. Mr. Teeter, or the Teeter Trust, owns between 40 - 50 properties in Carroll County, covering more than 200 total acres.[2]

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[1] While Rex intends to be the permittee and operator of the Grunder North Unit, other oil & gas companies also obtained leases in this area, which leases are proposed for inclusion within the unit. Thus, not all of the leases committed to the Grunder North Unit are held by Rex. It is not unusual for the well operator to hold less than 100% of the subject leases. Where another company holds some of the leases, the companies may "swap" leases to support their own individual projects. Or, the other company may elect to participate in the unit as a working interest owner. A working interest owner invests in a well and is liable for costs proportionate to the acreage contributed. The working interest owner also fully participates in the proportionate profits from a successful well. In this matter, Rex is, of course, a working interest owner. But, Chesapeake Exploration, LLC, CHK Utica, LLC, TOTAL E&P USA, Inc., and Belden & Blake Corporation (each of which contributed leased acreage to the unit) are also identified as working interest owners. In this matter, Rex holds leases for 505.5378 acres (about 85% of the unit), while the other working interest owners hold leases covering 17.2873 acres (about 3% of the unit).

[2] Some properties, initially owned by Mr. Teeter, or by Mr. Teeter and his wife, were eventually transferred to the Gary L. Teeter Trust. This transfer occurred in late 2011. The notice of appeal in this matter incorrectly identified the date of this trust document as August 2, 20**01**. In fact, the trust was created on August 2, 20**11**.

6. Beginning in 2010, Mr. Teeter was approached by oil & gas companies, or their agents, who were interested in leasing his Carroll County properties for oil & gas development.

7. Rex was one of the companies interested in leasing the Teeter properties. Mr. Teeter did lease approximately 113.1843 acres to Rex. Mr. Teeter leased other properties to Chesapeake Exploration, LLC. [3]

8. A 69-acre farm,[4] currently owned by the Teeter Trust,[5] and located along State Route 43, was of particular interest to Rex. This 69-acre farm is the subject of this decision, and will be hereinafter referred to as the "Teeter Farm." Under the current plan for the Grunder North Unit, portions of the lateral sections of two of the four proposed horizontal wells would be situated directly beneath the Teeter Farm. Therefore, unless the Teeter Farm is included within the North unit, these two wells could not be drilled. Part of the lateral section of a third proposed well falls within the required set-back area from the unleased Teeter Farm.[6] Therefore, if the Teeter Farm is not included in the unit, this third well could not be drilled without an approved set-back variance issued by the Division Chief.

9. Mr. Teeter is a farmer and a contractor, who has constructed many homes in the Carrollton area. Mr. Teeter testified that he purchased the 69-acre Teeter Farm in 1998, for the express purpose of eventually developing this property for residential or commercial use. For this reason, Mr. Teeter had a significant interest in assuring that an oil & gas drill pad would not be located upon this particular piece of property.

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[3] The Grunder North Unit, in fact, includes 10.558 acres (a 2-acre parcel and an 8.558-acre parcel) owned by Mr. Teeter, or the Teeter Trust, and voluntarily leased to Chesapeake Exploration, LLC. Chesapeake has committed these properties to the Grunder North Unit, in which Chesapeake holds a working interest.

[4] This farm is sometimes referred to as including 69.46 acres and sometimes referred to as including 69.49 acres. For ease in reference, the Commission will simply refer to this property as encompassing 69 acres.

[5] It appears that the 69-acre Teeter Farm was originally held in the name of Mr. Teeter's corporation, Image Corporation, and that in December 2011, this property was transferred to the Gary L. Teeter Revocable Trust.

[6] Ohio law requires a 500-foot set-back from unleased property for wells greater than 4,000 feet in depth. (See O.A.C. §1501:9-1-04(C)(4)(c).)

10. Mr. Teeter negotiated with Rex for a lease of his 69-acre farm. During the period of negotiations, representatives of Rex were unwilling to commit to the location of the drill pad for the Grunder North Unit.

11. Offers to lease extended to Mr. Teeter for the 69-acre Teeter Farm included signing bonuses and royalty payments in excess of the "historically-accepted" 12.5% royalty amount. The last offer to lease the Teeter Farm extended to Mr. Teeter by Rex, prior to June 25, 2011, included a $3,500 per-acre signing bonus and a 20% gross royalty payment.

12. On June 25, 2011, Rex held a signing event in Carrollton, Ohio. During this event, landowners who had agreed to lease with Rex were asked to appear and sign leases. Mr. Teeter and his wife attended the June 25, 2011 signing event. Mr. Teeter signed several documents on June 25, 2011, including a lease of 113.1843 acres to Rex. Leases signed by Mr. Teeter on June 25, 2011 included a $3,500 per-acre signing bonus and provided for a 20% gross royalty.

13. Mr. Teeter's testimony indicated that at the signing event he was presented with various documents, which he was expected to sign. Despite his request, Rex was unwilling to provide him with copies of the documents signed at the time of signing. Mr. Teeter testified that on June 25, 2011, he specifically indicated that he did not intend to sign a lease for his 69-acre farm.

14. On June 25, 2011, Mr. Teeter did <u>not</u> sign a lease with Rex for the 69-acre Teeter Farm. However, he unknowingly signed a Memorandum of Lease for this property.[7] By September 2011, Rex recognized that the Memorandum of Lease for the Teeter Farm was <u>not</u> supported by an actual signed lease, and contacted Mr. Teeter. Mr. Teeter reiterated that he did not intend to lease his 69-acre farm to Rex. Nonetheless, on February 15, 2012, Rex recorded the June 25, 2011 Memorandum of Lease for the unleased 69-acre Teeter Farm.

[7] An oil & gas lease contains the agreement negotiated between a landowner and an oil & gas company. As such, leases will contain details regarding all aspects of the negotiated agreement, including the financial "deal" reached between the parties. A lease must be recorded with the County Recorder's office. However, as oil & gas companies frequently do not wish to have the terms of their agreements with landowners made public, oil & gas companies often file a "Memorandum of Lease" with the County Recorder. The Memorandum of Lease establishes that a valid lease has been signed; but the memorandum excludes certain information regarding the financial "deal" reached between a landowner and the company. The Memorandum of Lease is recorded in lieu of recording the actual signed Lease Agreement.

15. As he had not signed a lease for his 69-acre farm with Rex, Mr. Teeter entered into negotiations with Chesapeake Energy for a lease of this property. Chesapeake Energy, or its agents, offered Mr. Teeter a $5,800 per-acre signing bonus and a 20% gross royalty for the 69-acre Teeter Farm. Mr. Teeter accepted this offer, and signed a lease with Chesapeake on February 28, 2012 for the Teeter Farm.

16. When Chesapeake attempted to record this lease, Chesapeake discovered that the June 25, 2011 Memorandum of Lease had been recorded for this property by Rex. Finding a recorded Memorandum of Lease with Rex for the Teeter Farm, Chesapeake could not file its lease covering the same property. Mr. Teeter was informed of this fact, and set about to have Rex's Memorandum of Lease released and removed as a recorded document. Mr. Teeter hired counsel to aid him in this process.

17. The Memorandum of Lease filed by Rex was finally released on August 28, 2012. And, Mr. Teeter so informed Chesapeake. However, as significant time had passed, Chesapeake withdrew its original offer to lease, and was unwilling to extend an offer to lease on the terms to which Mr. Teeter and Chesapeake had agreed in February 2012.

18. In September 2013, Rex extended an offer to lease to Mr. Teeter for the Teeter Farm on the same terms that had been included in the Chesapeake offer ($5,800 per-acre signing bonus and a 20% gross royalty; this offer also assured Mr. Teeter that there would be no surface affectment on the Teeter Farm). Mr. Teeter declined this offer.

19. With Mr. Teeter having "lost" his opportunity to lease with Chesapeake on the terms he desired, and with Mr. Teeter being unwilling to lease with Rex, the Teeter Farm remained unleased.

20. On May 13, 2014, Rex filed its unitization application with the Division. This application was thereafter supplemented on June 24, 2014.

21. Rex's unitization application asked the Division to include the 69-acre Teeter Farm as part of the Grunder North Unit. Rex's application also asked the Division to include another small parcel, encompassing 1.642 acres owned by Mr. Ronald Roudebush, Trustee, as part of the unit. The application acknowledged that Mr. Teeter and Mr. Roudebush would become "non-consenting parties" under a unitization order, and would ultimately be entitled to net revenue payments.[8]

22. Information submitted with the Grunder North Unit application estimated that the recovery from this unit, if all proposed wells were drilled, could be as much as 14 to 16 billion cubic feet equivalent ["Bcfe"] of natural gas or oil. This estimated recovery would have a value of between $2.4 and $4 million. Rex estimated the net value of each of the four proposed individual wells as between $600,000 and $1 million.

23. The Division scheduled a unitization hearing for September 11, 2014, to address the Grunder North Unit. The 69-acre Teeter Farm, and the 1.642-acre Roudebush tract, were proposed for unitization. Mr. Teeter, with counsel, and Mr. Roudebush's brother Marvin Roudebush[9] appeared for the Division's hearing. This hearing was Rex's opportunity to provide support for its request to unitize. The hearing was also Mr. Teeter and Mr. Roudebush's opportunity to obtain information about the proposed unitization. During the hearing, the Division posed questions to Rex and to the affected landowners. After the hearing, additional information was submitted by both Rex and Mr. Teeter.

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[8] As they had not signed leases with Rex or other companies, Mr. Teeter and Mr. Roudebush could be brought into the Grunder North Unit as working interest owners. However, working interest owners are expected to contribute, up-front, to the costs associated with the drilling and development of a well. This would require a large up-front investment. O.R.C. §1509.28(A)(6) sets forth a procedure by which unleased mineral owners may forgo this up-front investment. As unleased mineral owners, Mr. Teeter and Mr. Roudebush are ultimately entitled to their share in the profits from a successful well. O.R.C. §1509.28(A)(6) allows the Division Chief to defer the unleased mineral owners' shares in the profits until a "reasonable interest charge" is met. This allows the operator to recoup certain costs, and some interest, before commencing payments to the unleased mineral owner of a "net revenue" from the proceeds of the well. The interest charge is set by the Division as part of the unitization process. The "net revenue" amount to which the unleased mineral owner is entitled (after the interest charge is met) is 87.5% of net proceeds.

[9] Landowner Mr. Ronald Roudebush is elderly, and was not able to travel to Columbus for this hearing. Ronald Roudebush's brother, Marvin, appeared on his behalf.

24. On December 9, 2014, the Division issued Chief's Order 2014-544, approving unit operations for the Grunder North Unit. This order included the 69-acre Teeter Farm and Mr. Roudebush's 1.642-acre parcel as part of the unit, acknowledging that the Teeter Trust and Mr. Rodudebush, Trustee, had not voluntarily leased their subject properties. In the order, the Teeter Trust and Mr. Roudebush, Trustee, are identified as "unleased mineral owners." As unitized unleased members of the Grunder North Unit, the interests of Mr. Teeter and Mr. Roudebush are addressed under the terms and conditions of the unitization order and in accordance with the provisions of O.R.C. §1509.28.[10]

25. The Division testified that it typically authorizes a 12.5% royalty on gross proceeds to unleased mineral owners subject to unitization.[11] However, royalty percentages can, and are, negotiated during the leasing process. The average royalty amount being paid to voluntary lessors on the Grunder North Unit is 20% of gross proceeds. Rex testified at the Division's unitization hearing that a 20% gross royalty is currently its standard royalty amount in this area.

26. In its application for unit operations, Rex requested interest charges of 300% on the first well and 200% on any subsequent wells. The Division reviewed this request, and determined that reasonable interest charges on the Grunder North Unit should be 200% on the first well and 150% on any subsequent wells. Mr. Teeter and Mr. Roudebush will be entitled to their 87.5% net revenue once these interest charges are met.[12]

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[10] It has been noted by Rex and the Division, that during the Division's September 11, 2014 unitization hearing, Mr. Teeter was asked by Division geologist Steve Opritza whether he was fully aware of the consequences of proceeding under a unitization order as opposed to proceeding as a voluntary lessor in the unit. Mr. Teeter indicated at the Division's hearing that he was aware of the differences in these processes.

[11] Division witness Molly Corey testified that the typical royalty authorized under a unitization order is 12.5% proportionate to gross proceeds (see hearing transcript, page 201). Additionally, during the Division's unitization hearing, Division geologist Steve Opritza identified this percentage as the expected royalty amount under unitization orders (see Division Exhibit C, page 154). Indeed, in argument, Rex maintained that a 12.5% royalty has, historically, been considered the "industry standard" (see Rex's written closing arguments, p. 15).

[12] "Payout" on an oil & gas well occurs at the point at which all leasing, exploring, drilling and operation costs have been recovered. At that point, the well is considered to be turning a true profit. Thus, the point at which these wells reach "payout" is connected to when Mr. Teeter and Mr. Roudebush might expect to receive their 87.5% net revenue payments (for the first well, it would be payout plus 100% of payout; for subsequent wells, it would be payout plus 50% of payout). So whether, or when, these wells reach "payout" is important to the unleased mineral owners. At the Division's unitization hearing, representatives of Rex estimated that the wells might reach payout in 5 - 8 years. Notably, when Bruce Kramer (Rex's expert witness on oil & gas law) was asked when these wells might reach "payout," he opined that – based upon the projected costs associated with these wells by Rex – these wells may never reach "payout." So, while the prospect of a 87.5% net revenue payment may appear attractive to Mr. Teeter and Mr. Roudebush, there is no assurance that such payments will ever be made.

27. On January 7, 2015, the Gary L. Teeter Revocable Trust filed a notice of appeal from the issuance of Chief's Order 2014-544 with the Oil & Gas Commission.

DISCUSSION

In Ohio, oil & gas operations are conducted under the authority of Chapter 1509 of the Ohio Revised Code. The Division of Oil & Gas Resources Management possesses permitting, regulatory and enforcement authority over all aspects of oil & gas operations.

The recent development of the Marcellus and Utica Shale Plays in the Appalachian Basin has increased oil & gas exploration and production in Ohio. It may appear that oil & gas development is a relatively new phenomenon in Ohio. However, the truth is that Ohio is not new to the production of oil & gas, and that previous Ohio "oil rushes" have shaped oil & gas regulation in this state.

Oil was discovered in Ohio in 1814. By 1896, Ohio was the nation's leading producer of oil & gas. Eventually, production in Ohio dropped off. But, in 1963, Morrow County, Ohio experienced a notable "oil boom." Between 1963 and 1964, more than 200 wells were drilled in Morrow County. At that time, there were no comprehensive state statutes or regulations relating to oil & gas. The virtually unregulated development of oil & gas in Morrow County during the early 1960s prompted the enactment of Chapter 1509 of the Revised Code.

In 1965, the Ohio legislature enacted Chapter 1509 for the purpose of regulating Ohio's emerging oil & gas industry. Indeed, the Oil & Gas Board of Review (now known as the Oil & Gas Commission) was created as a result of the 1965 legislative initiative.

The 1963 Morrow County oil boom occurred in the absence of meaningful state regulation. At that time, Ohio was considered a "rule of capture state." Meaning, that if you could "capture" oil & gas from a well on your property, that oil & gas was "yours," regardless of the underground path that the oil & gas may have taken to reach your well.

In the early 1960s there were no spacing or set-back requirements. Thus, a property owner – who had the money to do so – could drill as many wells as he could afford on his property. And, these wells could be drilled right along his property line – basically ensuring that the well driller would "capture" oil & gas from beneath his neighbor's property. The 1963 Morrow County oil boom resulted in densely-sited wells, often clustered along property lines. The neighbors, who could not afford to drill wells, likely felt "robbed" of their resources. The large number and density of drilled wells by those landowners who could afford to drill also had the negative effect of de-pressurizing the oil & gas "pools" targeted by the wells. This haphazard and inefficient development of oil & gas wells in Morrow County was the impetus for developing oil & gas "conservation laws" in Ohio.

"Conservation" is a term subject to various interpretations. When we "conserve" energy in our homes, we are attempting to use as little energy as possible. So, "conservation" of oil & gas resources might sound like an effort to refrain from using such resources. But, there is another - more historic - interpretation of that term. "Conservation" statutes aimed at natural resources actually encourage the development of these resources; but require that development be undertaken in a sound, efficient and fair manner, and in a manner that prevents waste.

Ohio's comprehensive oil & gas "conservation" statutes, first enacted in 1965, envisioned the efficient development of the state's oil & gas resources. The statutes were also intended to protect the correlative rights of the persons – typically landowners – who owned the resources being developed by the industry. The "pooling" and "unitizations'" provisions of Chapter 1509 evolved in response to the state's interest in protecting the rights of individual owners of the oil & gas resources subject to development.

We tend to view property ownership in very black and white terms. If you own a piece of property, you assume that you own the airspace above you, and that you own the subsurface below you, purportedly to the center of the Earth. And, while this is mostly true, there are some "flaws" in this view. For example, the subsurface cannot be fenced. This means that while we, on the surface, draw and respect property lines and boundaries, below the surface these boundaries do not necessarily apply. This is particularly true in the case of fluids and gaseous materials.

Oil & gas resources are stored beneath the Earth's surface in formations possessing particular characteristics of porosity and permeability. The movement of fluids and gases through rock is complicated. The efficiency of subsurface movement is influenced by the nature of the geologic strata involved, and the ability of that rock strata to transport such materials. Geologic science helps us predict underground terrains and movements; but it is virtually impossible to definitively "know" the precise movement of materials through the subsurface. However, we do know one thing: the subsurface does not respect the boundary lines drawn by man on the Earth's surface.

Pooling and unitization statutes developed, in part, as a response to the over-development of oil & gas wells. Prior to the enactment of pooling and unitization statutes, in some states efforts were made to reduce the development of densely-packed surface wells. In the early 1900s, the City of Oxford, Kansas enacted an ordinance requiring that only one well could be drilled per city block. Under this ordinance, all landowners on that block would "share" in the development and proceeds from a single well. Eventually, in states where such laws were in place, situations developed where one neighbor might oppose, or decline to participate in, the drilling of a well. Where such situations arose, the non-participating landowner might raise a "takings claim," asserting that his property (the oil & gas) was being unconstitutionally taken without just compensation. Courts in such jurisdictions rejected "takings claims," as long as some payment (such as a royalty) was made to the non-participating neighbor. Hence, the concept of mandatory pooling and unitization was born.[13]

Ohio's pooling and unitization statutes allow the joining of the mineral interests of landowners, who refuse to lease their properties, into a drilling unit or unitized formation. In such cases, the state may bring a landowner into a pool or unit against that landowner's wishes.

[13] This is, of course, a very simplified summary of the laws and cases addressing the sharing mechanisms envisioned by compulsory cooperation regulations relative to the development of natural resources. Mr. Bruce Kramer, who was presented by Rex as an expert in pooling and unitization law, provided an expert report that goes into great detail relative to the history and development of pooling and unitization statutes. (See Division Exhibit E and Rex Exhibit 9.)

However, there is another side to this coin. Since we know that the subsurface is not fenced, if a well is drilled within a certain proximity to unleased property, we can assume that the oil & gas produced at a well-head may be drawing resources from beneath the unleased landowner's property.

Ohio's spacing and set-back laws attempt to estimate the "reach" of a well (*i.e.*, a 4,000 foot deep well is "assumed" to draw oil & gas from a 40-acre area; see O.A.C. §1501:9-1-04(C)(4)). Ohio's pooling and unitization statutes ensure that a mineral owner located within the possible "reach" of a well will be fairly compensated for any resources possibly removed from beneath that landowner's property. So, the pooling and unitization provisions of Ohio law are actually protective of the interests of mineral owners, who choose not to voluntarily participate in the development of a well.

In other words, while a mineral owner may feel "bad" about being "forced" into a pool or unit against his will; that owner, in fact, benefits from the statutory protections enacted to ensure that he will be fairly compensated for any resources that might be drawn from beneath his property as a result of the operation of a well, which a majority of his neighbors wish to have drilled.

Do the pooling provisions of O.R.C. §1509.27 apply in this case? Or do the unitization provisions of O.R.C. §1509.28 apply?

While the pooling and the unitization statutes are similar in their goals (*i.e.*, to include unleased landowners in the development of proposed wells), there are differences in these two processes. For example, in pooling situations, the Division generally requires that 90% of the landowners whose minerals are committed to the development of a well be voluntary lessors. However, under the unitization statute, only 65% of the mineral owners must be voluntary lessors.

The *Teeter* matter proceeded under the unitization statute, O.R.C. §1509.28. And, the question must be answered as to **why** the unitization statute was applied, as opposed to the pooling statute. Through argument, Mr. Teeter maintains that the pooling statute should apply; while Rex and the Division assert that the unitization statute applies. Mr. Teeter argues that unitization does not apply to the production (primary operations) of a well, and is only applicable to secondary recovery operations.[14] And, while this might be true in some jurisdictions, Ohio law does not draw this distinction.

Unfortunately, neither statute specifically articulates when one process should apply over the other.

The Commission recognizes that the Division is the agency tasked with regulating the oil & gas industry. Thus, the Division's determination to proceed under the unitization statute carries great weight. The Division is, after all, the "expert" in the regulation of the oil & gas industry.

However, in reviewing this matter, the Commission desires an understanding of why one statute applies over the other.

Rex, which advocates for this matter to fall under the unitization law, presented at hearing the testimony of Bruce M. Kramer, accepted as an expert in oil & gas law. Mr. Kramer provided the following definitions:

[14] Primary recovery from a well is considered production that occurs pursuant to the natural pressures held in underground formations. Over the life of a well, at some point there may be insufficient underground pressure to force the product to the surface. When this occurs, secondary recovery methods may be applied. Secondary recovery techniques increase reservoir pressure through the injection of water, or other materials, into a well. Secondary recovery is employed to increase reservoir pressure and ensure additional production from a well.

> ... I am defining pooling as: "the joining together of small tracts or portions of tracts for the purpose of having sufficient acreage to receive a well drilling permit under the relevant statute or local spacing laws and regulations and for the purpose of sharing production by interest owners in such a pooled unit." * * * To contrast: "Unitization or unit operations ... refer to the consolidation of mineral or leasehold interests, covering all or part of a common source of supply. The primary function of unit operations is to maximize production by efficiently draining the reservoir, utilizing the best engineering techniques that are economically feasible." * * * Pooling and unitization while distinct are clearly related concepts specifically when it comes to the legal ramifications of either voluntary or statutory [mandatory] pooling or unitization. With both pooling and unitization you have separate interests that are being combined so that activities, operations or production anywhere within the pooled unit or unitized area will be treated as activities, operations or production from all of the mineral or leasehold interests committed to the pooled unit or unitized area.

(Division Exhibit E, Kramer Report, page 8.) Mr. Kramer's statement highlights the similarities between pooling and unitization, but does not provide a clear distinction relative to why one statute should be applied over the other in the immediate appeal.

In the Commission's experience, the mandatory pooling provisions of O.R.C. §1509.27 come into play only when the Commission is considering a mandatory pooling order addressing a single well that fails to meet the spacing requirements of O.A.C. §1501:9-1-04(C).

The Grunder North Unit encompasses approximately 593.9571 acres, and proposes the installation of four horizontal wells. Because such a drilling program draws oil & gas from a vast area, the unit acreage greatly exceeds that recommended for any single well. Thus, the drilling unit acreage requirements of O.A.C. §1501:9-1-04(C), addressing single wells, do not logically apply.

Indeed, unitization orders target "formations," as opposed to isolated pools of oil & gas.[15] For example, the unitization order at issue targets entire portions of the Utica/Point Pleasant Formations situated beneath the unit area. Notably, there is nothing in the unitization order to suggest that landowners could not independently develop oil & gas resources contained in strata other than the Utica/Point Pleasant Formations.

In this matter, the Division has applied the unitization provisions of O.R.C. §1509.28. The language of Chief's Order 2014-544 allows Rex to develop multiple horizontal wells within the Utica/Point Pleasant Formations. The language of the unitization statute seems appropriate to this type of development. Moreover, the unitization statute is not clearly limited to secondary recovery operations, as Mr. Teeter contends. Thus, there is no statutory restriction, precluding the application of O.R.C. §1509.28 to production wells. For these reasons, the Commission **FINDS** that the provisions of O.R.C. §1509.28 are applicable in the immediate appeal.

Has Rex adequately satisfied the unitization requirements of O.R.C. §1509.28?

On May 13, 2014, Rex filed an application to operate a unit within the Utica/Point Pleasant Formations. Under O.R.C. §1509.28, the Division Chief is tasked with evaluating such applications. If the statutory requirements of O.R.C. §1509.28 are satisfied, the Chief issues an order authorizing the unit. In the immediate matter, the Chief considered information contained within Rex's application, and additional information submitted as part of, and following, a unitization hearing held by the Division on September 11, 2014.

[15] "Pool" is defined at O.R.C. §1509.01(E) as an "underground reservoir containing a common accumulation of oil or gas, or both ...". Rex's unitization application indicates that the proposed unitized formation (encompassing the subsurface area located between 50 feet above the top of the Utica Formation to 50 feet below the base of the Point Pleasant Formation) is anticipated to be reasonably uniformly distributed below the proposed unit area. Thus, this unit formation has been qualified as part of a "pool" under O.R.C. §1509.28. While the large formation targeted by the four proposed Grunder North horizontal wells is considered part of a "pool" under the provisions of O.R.C. §1509.28, "pools" targeted by single wells are viewed as more isolated sections of oil & gas, and are defined, and limited in size, by the spacing laws, which laws set forth minimum drilling acreages based upon the depth of a single well. (See O.A.C. §1501:9-1-04.)

O.R.C. §1509.28 requires that, in order for unit operations to be approved, the Chief must affirmatively find that:

> * * * [s]uch operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of estimated additional recovery of oil or gas exceed the estimated additional cost incident to conducing the operation.

(See O.R.C. §1509.28(A).) The Chief's order authorizing unit operations must also be based upon terms and conditions that are "just and reasonable." (See O.R.C. §1509.28(A).)

In this matter, the Chief determined that the operation of the Grunder North Unit was reasonably necessary to increase the recovery of oil & gas. The Division further found that the value of the estimated additional recovery of oil & gas from the Grunder North Unit would exceed the estimated additional cost of conducting the operations. In simpler terms, the Division found that unit operations would ensure the efficient development of the oil & gas resources underlying the Grunder North Unit, and that the proposed wells would be profitable.

Mr. Teeter argues that the evidence before the Chief was insufficient to satisfy the requirements of O.R.C. §1509.28. Mr. Teeter also contends that the terms and conditions of the Chief's Order are not just or reasonable. The Division and Rex argue otherwise.

Oil & gas development is speculative and uncertain. Any well could be a success or a failure. These are the uncertainties faced by the industry. Notably, in evaluating the potential profitability of the Grunder North wells, O.R.C. §1509.28 only requires the Chief to consider **estimated** recoveries and **estimated** costs. This makes sense when evaluating operations in such a speculative industry. And, O.R.C. §1509.28 does not require the Chief to conduct detailed financial calculations or analyses.

Mr. Teeter argues that the Chief should have conducted more extensive evaluations of the estimates provided by Rex, and suggests that the Chief acted as a "rubber stamp" in accepting the forecasts presented by Rex.

It is clear that the Division **did** review the figures and calculations presented by Rex. For example, the "interest charge" suggested by Rex was altered by the Division. And the Division sought more in-depth information from Rex during the September 11, 2014 unitization hearing. Additional items, including information regarding production from nearby wells, were submitted by Rex following that hearing. (See Division Exhibits E & G.) Moreover, the Division testified that it was simply looking for a "positive number" when comparing estimated recovery to estimated costs.

The information submitted to the Chief by Rex indicated that the net present value of the Grunder North Unit, with the Teeter property included, is between $2.4 and $4 million, or approximately $600,000 to $1 million for each of the four proposed wells. These figures indicate that the wells can be operated profitably.

The drilling plan for the Grunder North Unit proposes four horizontal wells, which are basically evenly spaced across the unit. Given the size and location of the Teeter property, only one of the four proposed wells could be drilled without unitization.[16] Thus, the failure to unitize would result in an immediate loss of as much as 75% of potential production. Clearly, adding the Teeter Farm to this unit greatly increases the recovery potentials, as well as the profitability, of this drilling program.

Some unitization applications may be "close-calls," and may warrant more extensive scrutiny. But, the Commission **FINDS** that the Division's evaluation was adequate for these particular wells.

[16] There is a possibility that two of the four proposed wells could be drilled. However, one of these wells includes portions of a lateral section that runs directly beneath the 500-foot set-back from unleased property required under O.A.C. §1501:9-1-04(C)(4)(c). It is possible that this well could be drilled without the inclusion of the Teeter Farm in the Grunder North Unit. However, the drilling of this particular well would require the approval of a variance from the set-back requirements by the Division Chief. So, the failure to unitize would decrease the number of proposed wells to be drilled from four to either one or two.

Recall that "conservation" statutes anticipate and encourage the development of resources, but also require that development to be efficient and avoid waste. Here, Rex is already operating on an adjacent unit (the Grunder South Unit). Thus, much of the infrastructure for the operation of the Grunder North Unit is already in place (*i.e.*, the evidence in this case revealed that the Grunder South Unit's well pad, which is already constructed and in use, will also be utilized for the Grunder North Unit). From a "conservation" standpoint, the most efficient means of "harvesting" the oil & gas underlying the Grunder North Unit is for Rex to be permitted to unitized the North unit. More importantly, if unit operations are not approved, up to 75% of the resources in this area may be lost. This, simply, is not a "close case."

As will be more fully discussed later in this decision, "trust issues" have clearly developed between Rex and Mr. Teeter. And, it is true that both Mr. Teeter and the Division will have to depend upon financial information provided by Rex to determine the productiveness of the wells at issue. However, the Division maintains an oversight function with regards to these wells. Additionally, the unitization order provides certain audit rights to Mr. Teeter. Mr. Teeter did not establish at hearing that the audit rights under the unitization order were insufficient for his purposes as a unitized unleased mineral owner.

The Commission **FINDS** that the Division's evaluation of the Grunder North unitization application was proper and established compliance with relevant provisions of O.R.C. §1509.28.

Should Mr. Teeter, or the Teeter Trust, receive a per-acre signing bonus, even though Mr. Teeter, or the Teeter Trust, did not voluntarily enter into a lease associated with the Teeter Farm?

Beginning in 2010, Mr. Teeter was approached by land agents, offering to lease the oil & gas rights under his 69-acre farm. Generally, these offers were extended by agents of Rex. But some offers came from agents of other oil & gas companies working in the area.

These offers to lease included "signing bonuses," which were monetary payments, extended on a per-acre basis, as an incentive for Mr. Teeter to sign a lease. The signing bonuses seemed to fluctuate, depending upon the companies' opinions on how "essential" Mr. Teeter's piece of property was to the overall drilling program or depending upon the market value of the resource. Initially, the signing bonus offered was $500 per acre. Eventually, the bonus rose to $5,800 per acre. The bonus amounts both increased and decreased during the period of negotiations.

The best offer extended to Mr. Teeter included a $5,800 per-acre signing bonus, and a 20% gross royalty. Some of Mr. Teeter's neighbors undoubtedly accepted a similar offer. We must assume that other neighbors signed leases that were less lucrative.

Mr. Teeter, for various reasons, ultimately did not lease the 69-acre Teeter Farm.[17] As a result of the Chief's approval of Rex's unitization application, Mr. Teeter was placed under the unitization provisions of O.R.C. §1509.28. There is no language in the statute requiring that Mr. Teeter receive the signing bonuses offered to his neighbors who voluntarily entered into leases. Indeed, the whole concept behind signing bonuses is that such payments are an incentive and reward for voluntary leasing.

Once it was determined that the Teeter Farm would not be leased, and would be addressed through a unitization application, Mr. Teeter subjected himself to the provisions of the unitization statute. Therefore, he cannot now be heard to complain that he has not received the same treatment extended to voluntary lessors.

In choosing to proceed as a unitized unleased mineral owner, Mr. Teeter is subject to the terms and conditions of the Chief's unitization order and the provisions of O.R.C. §1509.28. The Commission **FINDS** that Mr. Teeter is not entitled to the signing bonuses that may have been offered to voluntary participants in this unit, and which payments are not required by statute or authorized under the unitization order.

[17] The evidence revealed that Mr. Teeter did sign a lease for the 69-acre Teeter Farm with Chesapeake. However, due to delays in the release of Rex's Memorandum of Lease on the property, the lease between Mr. Teeter and Chesapeake was never effectuated. (See Findings of Fact 15 - 17.)

Are the terms and conditions of the Chief's unitization order just and reasonable?

O.R.C. §1509.28(A) requires that a unitization order issued by the Chief "be upon terms and conditions that are just and reasonable." The terms and conditions of a unitization order must not only be just and reasonable to an unleased mineral owner, like Mr. Teeter, but must be just and reasonable to **all** parties subject to the order, including Rex.

Under the unitization order, the Division entitled Mr. Teeter to a 12.5% gross royalty on his allotted share of all oil & gas produced from the unit. This royalty payment begins upon the commencement of production.

The Division testified that, under unitization orders, it typically authorizes a 12.5% gross royalty. However, the evidence also established that, during lease negotiations, larger royalty percentages were offered on the Grunder North Unit. The evidence revealed that a 20% gross royalty was offered to most landowners in this unit, and is, in fact, the average royalty amount for the unit. During the Division's unitization hearing, Rex testified that a 20% gross royalty is considered its standard payment in this area.

While Mr. Teeter did not enter into a voluntary leasing arrangement for his 69-acre farm, the Commission believes that it is "just and reasonable" for Mr. Teeter to receive a royalty payment commensurate with the average royalties paid to other members of this unit.

Therefore, as regards the royalty payments authorized under the unitization order, the Commission **FINDS** that the terms and conditions of Chief's Order 2014-544 are not "just and reasonable," as Mr. Teeter's royalty payments will be substantially less than the average, and standard, royalty payment for this unit.

The Commission further **FINDS** that a royalty payment of 20% of gross proceeds is "just and reasonable" for the Grunder North Unit, and should be paid to the unitized unleased mineral interest owners until such time as the unleased mineral interest owners are entitled to their 87.5% net revenue payments.[18] Once net revenue payments commence, the royalty payments may be reduced to a rate of 12.5% of gross proceeds.

As an unleased mineral owner, the unitization order also entitles Mr. Teeter to an 87.5% net revenue payment based upon his allotted share of the wells' production.

In accordance with O.R.C. §1509.28(A)(6), the Chief may include in a unitization order:

> A provision ... for carrying or otherwise financing any person who is unable to meet the person's financial obligation in connection with the unit, allowing a reasonable interest charge for such service.

Pursuant to the above provision, net revenue payments may be deferred until a "reasonable interest charge" on the wells is realized.

Most working interest owners must invest, up front, in a proposed well. However, as an unleased mineral owner, O.R.C. §1509.28(A)(6) allows the Chief to excuse Mr. Teeter from making this up-front investment. Instead, Mr. Teeter will forgo his 87.5% net revenue payments until reasonable interest charges are met.[19] The deferment of Mr. Teeter's revenue payments allows Rex to recoup the costs associated with the development of the wells, and to receive some interest, before having to disburse to Mr. Teeter his 87.5% net revenue.

[18] As an unleased mineral interest owner, Mr. Ronald Roudebush shall also receive this enhanced royalty amount.

[19] This type of interest charge is sometimes referred to as a "risk penalty."

Notably, Rex's application for unitization requested interest charges of 300% on the initial well and 200% on any subsequent wells. These charges were reviewed and adjusted by the Division, with the Division reducing the interest charges to 200% on the initial well and 150% on any subsequent wells. The Division testified that these adjusted percentages are typical of the amounts allowed by the Division Chief under unitization orders.

Mr. Teeter suggests that the interest charges are excessive as no geologic risks have currently been identified in association with the targeted formation. The evidence established that Rex has not encountered any "unpleasant surprises from a geology standpoint" in geo-steering wells during the drilling process in this area. However, the evidence further established that geologic risks may still exist. Moreover, geologic risks are not the only risks faced by the driller of a well.

As noted previously, oil & gas development is an uncertain business. Geology, of course, adds to this uncertainty. But, economic and operational risks are inherent elements of oil & gas development.

As an unleased mineral owner, Mr. Teeter now faces these same risks and uncertainties. We can hope that the Grunder North wells are successful; but we cannot know this. This is not to say that Mr. Teeter might not benefit from proceeding under the unitization program. He may. Mr. Teeter knowingly elected to proceed as a unitized unleased mineral owner. At this early stage in the process, no one can determine with certainty whether Mr. Teeter made a "good" decision or a "bad" decision. But, the Division cannot, through the terms and conditions of a unitization order, guarantee that the development of the Grunder North Unit will be financially successful for Mr. Teeter.

It must also be noted that Mr. Teeter benefits from other provisions set forth in the unitization order. For example, the Chief's order specifically exempts Mr. Teeter's property from any surface affectment without prior written consent, and exempts Mr. Teeter from any liability for personal or property damage associated with the drilling and operation of these wells.

Based upon the evidence presented, the Commission **FINDS** that the terms and conditions of Chief's Order 2014-544 are "just and reasonable," as regards the reasonable interest charges. The Commission further **FINDS** that the terms and conditions of the unitization order, relative to the reasonable interest charges, appropriately balance the competing interests of all parties affected under the order.

Were the signing procedures inherently unfair to Mr. Teeter, or the Teeter Trust, and do these procedures impact the unitization order?

Mr. Teeter described in testimony the signing process relative to the Grunder North Unit. Frankly, the signing event of June 25, 2011 sounds chaotic; and Rex presented little evidence to overcome this impression. It is significant to note that, on June 25, 2011, Mr. Teeter signed a document that he did not think he was signing, **and** he did not sign a document that Rex thought he had signed. This speaks to the chaos of the event.

Oil & gas companies contract with landmen, who are tasked with obtaining leases to support drilling projects. It must be remembered that the oil & gas companies, and their agents, are in the business of obtaining leases to support their drilling projects. But, most landowners are unfamiliar with oil & gas leases, and will likely participate in the leasing of their property only once in their lifetimes. Through his work as a contractor, Mr. Teeter is more familiar than most with contractual agreements.

Mr. Teeter hopes to someday develop his 69-acre farm. Therefore, he had a particular interest in ensuring that a drill pad would not be sited on his property. Yet, Rex, or its agents, seemed unwilling to commit to the location of the drill pad during lease negotiations.

Mr. Teeter also requested that he be immediately provided with copies of any documents that he signed on June 25, 2011. This does not appear to be an unreasonable request. Yet, Rex, or its agents, were unwilling to provide Mr. Teeter with copies of these documents at the time of the signing. It is no surprise that "trust issues" began to develop between Mr. Teeter and Rex.

Add to this, the fact that Mr. Teeter appeared and participated in the Division's September 11, 2014 unitization hearing, during which Rex was called upon to support its need for unitization. This hearing was also Mr. Teeter's opportunity to receive answers to his questions regarding unitization.

The transcript from this hearing indicates that Rex was evasive as to many details relative to unitization and specifically as to the profitability of nearby wells. This evasiveness was noted by the Division on the Record of that hearing:

> Steve Opritza: * * * And one other comment, just in general. We heard a lot of this about proprietary. Answers that we took to be evasive in one form or another. The chief doesn't look kindly upon that stuff when he's reviewing these applications.
>
> * * *
>
> Molly Corey: I also want to say to follow up on what Mr. Opritza said, and respecting the understanding that there are certain limitations on the types of information you can receive or give us at this point, I think that the production information on the Grunder South is probably the least of our concerns in terms of the fact that we did have a number of other things that were not able to be answered today. And to us, by the time we get to this point where we are involving private citizens' land or anybody's land that's being forced into a unit, we want to make sure that we have the best information possible to evaluate that when we make our decision.

(Division Exhibit C, pages 177 & 183.)

The oil & gas industry has a responsibility to be sensitive to the interests of those persons who they intend to bring into their drilling units. That is took Mr. Teeter several months, and significant legal fees, to obtain the release of a Memorandum of Lease (which did NOT represent an actual signed lease) is disconcerting to this Commission, and reflects poorly upon this industry.

The improperly filed Memorandum of Lease does not impact the decision that the Commission must make in this case; and the Commission will not comment further upon whether other actions to redress this situation exist.

However, this case underscores a failure by Rex to sufficiently inform potential participants in the Grunder North Unit of certain matters that are critical to a landowner's decision of whether, or not, to participate as a lessor in a drilling unit. And, it draws further attention to the poor interactions that are frequently reported between this industry and the landowners, who are the industry's critical "partners" in the development of oil & gas resources.

While the Commission **FINDS** that the leasing arrangements between Mr. Teeter and Rex do not directly affect Chief's Order 2014-544, based upon the facts of case, it is clear that improvements in Rex's leasing protocols may be warranted.

CONCLUSIONS OF LAW

1. O.R.C. §1509.36 provides that any person adversely affected by a Chief's order may appeal to the Oil & Gas Commission. O.R.C. §1509.36 addresses the standard of review applied in Commission appeals, and provides *inter alia*:

> If upon completion of the hearing the commission finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the commission finds that the order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order that it finds the chief should have made.

Hearings before the Commission are *de novo* in nature; meaning that the Commission takes a "fresh look" at the evidence presented at hearing. The Commission is not restricted to a record developed before the Division Chief. Rather, the Commission may consider any evidence that either supports or refutes the Chief's decision under appeal.[20]

[20] The Commission is an administrative review board, and operates on the agency level. The Commission's review is not restricted to a record developed before the Chief, and the Commission may freely evaluate factual issues. In fact, O.R.C. §1509.36 allows the Commission to substitute its judgment for that of the Chief (*i.e.*, to modify a Chief's order under review) where appropriate. Thus, the scope of the Commission's review is not limited in same manner as an appellate court's would be. Decisions of the Oil & Gas Commission are directly appealable into the Ohio courts. (See O.R.C. §1509.37). Judicial review of a Commission decision is limited to the record developed before the Commission.

In this appeal, Appellant the Teeter Trust, shoulders the burden of proving, by a preponderance of the evidence, that the Grunder North Unitization Order was unlawful or unreasonable.

2. O.R.C. §1509.28 provides:

> (A) The chief of the division of oil and gas resources management, upon the chief's own motion or upon application by the owners of sixty-five percent of the land area overlying the pool, shall hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof. An application by owners shall be accompanied by a nonrefundable fee of ten thousand dollars and by such information as the chief may request.
>
> The chief shall make an order providing for the unit operation of a pool or part thereof if the chief finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting the operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:
>
> * * *
>
> (6) A provision, if necessary, for carrying or otherwise financing any person who is unable to meet the person's financial obligations in connection with the unit, allowing a reasonable interest charge for such service; * * *

3. The provisions of the unitization statute, O.R.C. §1509.28, as opposed to the pooling statute, O.R.C. §1509.27, were appropriately applied to the facts of this matter.

4. The Division Chief properly found that unit operations on the Grunder North Unit were reasonably necessary to increase substantially the ultimate recovery of oil & gas from this area.

5. The Division Chief properly found that the value of the estimated additional recovery of oil or gas from the Grunder North Unit exceeds the estimated additional cost incident to conducting these unit operations.

6. The Division Chief properly evaluated Rex's application for unitization, and properly determined that unitization was appropriate in this case.

7. The terms and conditions of Chief's Order 2014-544, addressing the payment of royalties to unleased mineral owners, were not just and reasonable. The order shall be **modified** to allow the payment of a 20% gross royalty to unleased mineral interest owners, until such owners are entitled to their net revenue payments, after which a 12.5% gross royalty shall apply.

8. The terms and conditions of Chief's Order 2014-544, addressing the assessment of reasonable interest charges, applicable to unleased mineral interest owners, were just and reasonable.

9. The Division Chief's ultimate determination authorizing unit operations for the Grunder North Unit was appropriate, but must be **modified** as to the royalty amounts paid to unleased mineral interest owners.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **VACATES** the Division's issuance of Chief's Order 2014-544, approving unit operations in the Utica/Point Pleasant Formations for the Grunder North Unit, and **ORDERS** that Chief's Order 2014-544 be **MODIFIED** consistent with the Findings and Conclusions set forth in the immediate Order.

Date Issued: 9/17/2015

J. BRANDON DAVIS, *Chair*

ROBERT S. FROST, *Vice Chair*

DR. JEFFREY J. DANIELS, *Secretary*

ROBERT C. SMITH

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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BEFORE THE

OIL & GAS COMMISSION

GARY L. TEETER REVOCABLE TRUST, Appellant, -vs- DIVISION OF OIL & GAS RESOURCES MANAGEMENT, Appellee, and R.E. GAS DEVELOPMENT, LLC, Intervenor.	:	Appeal No. 895 Review of Chief's Order 2014-544 (R.E. Gas Development, LLC; Grunder North Unit) **INDEX OF EVIDENCE PRESENTED AT HEARING**

Before: J. Brandon Davis

In Attendance: Jeffrey J. Daniels, Robert S. Frost, Robert C. Smith

Appearances: J. Richard Emens, Craig J. Wilson, Counsel for Appellant Gary L. Teeter Revocable Trust; Brian Becker, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; John K. Keller, Gregory D. Russell, Michael J. Settineri, J. Taylor Airey, Counsel for Intervenor R.E. Gas Development, LLC.

WITNESS INDEX

Appellant's Witnesses:

Appellee's Witnesses:

Intervenor's Witnesses:

Matt Matheny	Direct Examination
Bruce M. Kramer	Direct Examination; Cross Examination

EXHIBIT INDEX

Appellant's Exhibits:

Teeter Exhibit A	Subject Property: Timeline of Activity (1 oversized page)
Teeter Exhibit C	First page of Memorandum of Oil & Gas Lease between Image Incorporated (lessor) and R.E. Gas Development, LLC (lessee); dated June 25, 2011, filed February 15, 2012 (1 page); **replaced** by full Memorandum of Oil & Gas Lease; dated June 25, 2011, filed February 15, 2012 (17 pages)
Teeter Exhibit D	Release of Oil & Gas Lease; filed August 28, 2012 (2 pages)
Teeter Exhibit F	Article Entitled Ohio Oil and Gas Conservation Law – the First Ten Years (1965 – 1975), by J. Richard Emens and John S. Lowe (2 pages); **replaced** by full article (51 pages)
Teeter Exhibit G	**PROFFERED**. Letter from Craig J. Wilson (counsel for Teeter) to Division Chief; dated December 19, 2014 (3 pages)
Teeter Exhibit K	Page 31 of Transcript from September 11, 2014 Division Unitization Hearing (1 page)

Appellee's Exhibits:

Division Exhibit A	R.E.Development's Application for the Grunder North Unit; filed June 24, 2014 (149 pages)
Division Exhibit B	Gary L Teeter Revocable Trust Dated August 2, 2001 Written Comments Relating to R.E. Gas Development's Application for Grunder North Unit Operations; dated September 11, 2014 (35 pages)

Division Exhibit C	Transcript of Unitization Hearing held by the Division on September 11, 2015 (185 pages)
Division Exhibit D	E-Mail from Craig Wilson (counsel for Teeter) to Molly Corey and Steve Opritza (Division); dated September 22, 2015 (1page)
Division Exhibit E	Response of R.E. Gas Development, LLC to Comments; dated October 24, 2014 (13 pages)
Division Exhibit F	Chief's Order 2014-544; issued December 9, 2014 (14 pages)
Division Exhibit G	E-Mail from J. Taylor Aires (counsel for R.E. Development) to Steven Opritza (Division); dated September 16, 2014, with attached Press Release (3 pages)
Division Exhibit H	Unitization Application Procedural Guideline; revised May 9, 2014 (5 pages)

Intervenor's Exhibits:

Rex Exhibit 1	Map of Grunder North Unit (1 page)
Rex Exhibit 3	E-Mail from Ashley Van Scyoc (Rex Energy Corporation) to Gary Teeter; dated September 1, 2011, with attached unsigned proposed lease and copies of signed memoranda of leases for 69.49 acres (67 pages)
Rex Exhibit 4	E-Mail from Gary Teeter to Craig Wilson; dated May 1, 2015, including a January 27, 2015 letter from Jay Swanson (Kenyon Energy, LLC, on behalf of Chesapeake Energy), regarding an offer to lease 71.34 acres, more or less, of property owned by Gary L. Teeter (2 pages)
Rex Exhibit 5	E-Mail from Gary Teeter to Craig Wilson; dated May 1, 2015, including a November 11, 2014 correspondence from Sarah Benes (Kenyon Energy, LLC, on behalf of Chesapeake Energy), regarding an offer to lease (2 pages)

Rex Exhibit 6	Letter from David Rogers (Rex Energy Corporation) to Gary L. Teeter, reflecting an offer from Rex to lease 69.49 acres from Gary L. Teeter; dated September 24, 2013, with proposed leases and Order for Payment (37 pages)
Rex Exhibit 7	Plat Design for Grunder North Unit and typical proposed lease (36 pages)
Rex Exhibit 8	Lease signed by Gary L. Teeter and Denise Teeter (lessors) to R.E. Gas Development; dated June 25, 2011 for 113.1843 acres, more or less (20 pages)
Rex Exhibit 9	Expert Report of Bruce M. Kramer; undated (15 pages)
Rex Exhibit 11	E-Mail from Debra Herrington (Rex Energy Operating Corp) to David L. Rogers, Duane Maust, Nicholas Cooper, Adam Hoffer and Mary Ann Fox (Rex Energy); dated October 10, 2013 (1 page)